



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Pesticide Control Board
Virginia Administrative Code (VAC) citation	2 VAC 20-60
Regulation title	Regulations for Pesticide Containers and Containment Under Authority of the Virginia Pesticide Control Act
Action title	New regulations to establish standards and requirements for pesticide containers, repackaging pesticides, and pesticide containment structures.
Date this document prepared	August 18, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Part 165 of Title 40 of the Code of Federal Regulations, *Pesticide Management and Disposal*, prescribes standards and requirements for pesticide containers, repackaging pesticides and pesticide containment structures. The states are required to demonstrate compliance with the federal rule. For states such as Virginia that do not already have equivalent regulations already in place, three compliance options exist:

1. Enforce provisions of the federal rule using federal credentials;
2. Incorporate the federal rule into the state's current regulations; or
3. Promulgate new regulations that are at least equivalent to the federal rule.

In Virginia, compliance with the federal rule is currently met through the use of federal credentials issued to Virginia pesticide inspectors by the U.S. Environmental Protection Agency (EPA). However, the promulgation of state regulations is viewed as a more desirable, more practical and more cost-effective alternative. Thus, this regulatory action seeks to establish

Virginia's own regulatory standards and requirements for pesticide containers, repackaging pesticides and pesticide containment structures that are equivalent to the federal rule.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 3.2-3906 of the Code of Virginia (Code) authorizes the Pesticide Control Board to adopt regulations that may be necessary to carry out the purposes of Chapter 39 of Title 3.2 of the Code, regarding pesticides. This authority is discretionary.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Regulatory standards and requirements for pesticide containers, repackaging pesticides and pesticide containment structures are essential to protect the environment from potential contamination resulting from accidental pesticide discharges. The enforcement of the current federal regulations utilizing the federal credentials issued to Virginia's pesticide inspectors by the EPA is sufficient to demonstrate compliance with the federal rule. However, the promulgation of Virginia's own regulations would allow more flexibility and greater discretion in the enforcement of pesticide container and containment requirements based on Virginia's unique needs and conditions. The health, safety and welfare of Virginians would not be adversely impacted because the regulations would be equivalent to those currently in place at the federal level. Moreover, the enforcement of a state pesticide container and containment regulation would be more cost effective. Under the proposed regulations, inspectors would be able to perform container and containment inspections in conjunction with other inspectional activities at all applicable sites.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

These are new Virginia regulations that will be equivalent to Part 165 of Title 40 of the Code of Federal Regulations, *Pesticide Management and Disposal*. The regulations will establish standards for container design and residue removal in non-refillable pesticide containers,

standards for container design in refillable pesticide containers, standards for repackaging pesticide products into refillable containers and standards for pesticide containment structures.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

As previously indicated, states like Virginia have three alternatives to comply with the federal rule. Those alternatives are:

1. Enforce provisions of the federal rule using federal credentials; or
2. Incorporate the federal rule into the state's current regulations; or
3. Promulgate new regulations that are at least equivalent to the federal rule.

With respect to Alternative 1, the enforcement of the federal rule using federal credentials is deemed a less desirable, less practical and less cost-effective alternative to the promulgation and enforcement of Virginia's own regulations. Alternative 2 is not applicable in Virginia because the statute does not authorize the Pesticide Control Board to incorporate by reference the federal rule. Thus, Alternative 3 is deemed to be the most viable.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to:

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Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period. A public hearing will be held during the proposed stage.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

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Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulation will have no known impact on the institution of the family or on family stability.